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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD L. MILBOURN, Petitioner-Appellant, v. E.K. MCDANIEL, ET AL., Respondents-Appellees.	No. 04-17551 D.C. No. CV-N-01-464-HDM MEMORANDUM[*]

Appeal from the United States District Court
for the District of Nevada
Howard D. McKibben, District Judge, Presiding

Argued and Submitted April 6, 2006
San Francisco, California

Before: NOONAN, SILER,[**] and BYBEE, Circuit Judges.

Petitioner Richard Milbourn appeals denial of his petition for a writ of habeas corpus. For the reasons below, we affirm the district court.

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[*] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

[**] The Honorable Eugene E. Siler, Jr., Senior United States Circuit Judge for the Sixth Circuit, sitting by designation.

First, admitting Milbourn's request for an attorney did not clearly violate an established Supreme Court precedent. *Doyle v. Ohio*, 426 U.S. 610 (1976), held that a defendant's silence after being read his *Miranda* rights could not be used as a basis for impeachment or to draw inferences of guilt. *Id.* at 619. Here, an officer testified that Milbourn requested an attorney once he was read his *Miranda* rights, but then proceeded to speak at length during the drive to the police station. Any prejudice was minimal because the statement was fleeting and the prosecution never sought to use it to draw an inference of guilt. Thus, it was harmless error at worst. *See Inthavong v. Lamarque*, 420 F.3d 1055, 1059 (9th Cir. 2005).

Second, admission of Milbourn's voluntary statement to a corrections officer, "You better get the detectives over here with my lawyer because I want to confess my crimes," was not in violation of any clearly established Supreme Court precedent. Furthermore, given the superabundance of incriminating evidence, Milbourn fails to prove prejudice. *See Arizona v. Fulminante*, 499 U.S. 279, 310 (1991) ("when reviewing the erroneous admission of an involuntary confession, the appellate court . . . simply reviews the remainder of the evidence to determine whether the admission of a confession was harmless beyond a reasonable doubt.").

The rest of Milbourn's contentions are without merit.

AFFIRMED.